

## RESOLUTION

### A ZONING ORDINANCE TEXT AMENDMENT TO ARTICLES 3, 5 AND 15 TO REVISE PROVISIONS RELATED TO THE IMPORTATION, STORAGE OR DISPOSAL OF NONAGRICULTURAL FILL MATERIAL

WHEREAS, the Zoning Ordinance regulates the storage or disposal of nonagricultural excavation material in conjunction with an agricultural operation, if the excavation material, waste and debris are not generated on the farm; and

WHEREAS, the County has determined the regulations require amendment to further restrict the importation, storage and disposal of nonagricultural fill materials; and

WHEREAS, Section 15.2-2288 of the *Code of Virginia* allows a locality to require a legislative approval for the storage or disposal of nonagricultural excavation material, waste and debris if the excavation material, waste and debris are not generated on the farm; and

WHEREAS, Section 3-2.301 of the *Code of Virginia* allows a locality to enact a Zoning Ordinance to restrict practices in an agricultural district if such restriction bears a relationship to the health, safety, and general welfare of its citizens; and

WHEREAS, the County has determined that the public necessity, convenience, general welfare and good zoning practice warrant this amendment; and

WHEREAS, the Fauquier County Board of Supervisors initiated this text amendment on July 11, 2019; and

WHEREAS, on February 24, 2021, the Fauquier County Planning Commission conducted a public hearing and considered written and oral testimony; now, therefore, be it

RESOLVED by the Fauquier County Planning Commission this 18<sup>th</sup> day of March 2021, That the Planning Commission hereby recommends approval of the following text amendment:

## ARTICLE 3

### PART 3

### 3-300

### USES

See Page III-4 for Key																			
	SITE PLAN	RC	RA	RR-2	V	R-1	R-2	R-3	R-4	TH	GA	MDP	C-1	C-2	C-3	CV	BP	I-1	I-2
<b>3-317 INDUSTRIAL (CATEGORY 17)</b>																			
1. General Industrial Use substantially screened from view, less than one acre	X	SE	SE														A	P	P
2. General Industrial Use, substantially screened from view, more than one acre used	X		SE														A	P	P
3. Contractors offices, shops and material storage yards with all equipment and materials contained entirely within a building or completely screened from view	X												A	A	A	A/SE	A	P	P
4. Sawmills	X	SP	SP															SP	P
5. Heavy Industrial Uses (those uses specifically listed in 5-1703)	X																	SE	SE
6. Explosives storage	X	A*	A*														A*	A*	A*
7. Abattoir (up to 4 acres)	X																	SE	SE
8. Abattoir (more than 4 acres)	X																	SP	SP
9. Storage or Disposal of Nonagricultural Fill/Stockpiling	X		SE														A	A	A
*Refer to Section 5-1704, Additional Standards for Explosives Storage in the RA, RC, I-1, and I-2 Zoning Districts																			
<b>3-318 AGRICULTURE (CATEGORY 18)</b>																			
19. Aviary, Commercial		SP	SP	SP															
20. Lumber Yard with incidental retail sales of less than 5,000 square feet in size	X													P			P	P	
21. Adaptive Reuse Within Non-Common Open Space	X	SE	SE																
22. Farmer's Market	X		SP																
23. Petting Zoo	X		SP																
24. Abattoir	X		SE																
25. Storage or Disposal of Non-Agricultural Fill Material not Generated on the Farm in Conjunction with an Agricultural Operation		A/SE	A/SE																

### PART 17

### 5-1700

### CATEGORY 17 GENERAL INDUSTRIAL

In addition to the general standards as set forth in Section 006 above, the following standards shall apply:

#### 5-1707

#### ADDITIONAL STANDARDS FOR STORAGE OR DISPOSAL OF NONAGRICULTURAL FILL/STOCKPILING

##### 5-1707.1

Nonagricultural fill activities not established and operated in conjunction with a permitted use or established and operated with an approved site or subdivision plan, including any grading plan that proposes the importation of fill beyond an amount necessary and appropriate for the activity or use as determined by the Zoning Administrator, are subject to the following standards:

- A. Minimum lot size is five (5) acres.
- B. No single area of fill shall exceed an area greater than two (2) acres.
- C. The height of fill shall not exceed eight (8) feet in the Agricultural (RA) District and twenty-five (25) feet in the Industrial Districts above the original natural grade and the slope shall not exceed a 3:1 ratio.
- D. The fill shall not be visible above the existing tree line as viewed from any property line.

- E. No fill placement shall occur within 100 feet of any wetlands, floodplain limit, well, stream bank property line zoned to an agricultural or residential district.
- F. No activity associated with a filling operation, to include loading/unloading area, or general construction/operations shall occur within 500 feet of an existing residential structure.
- G. Hours of activity shall be limited to 7:00 a.m. to 6:00 p.m.
- H. Access shall be from a paved, State maintained road. No fill activity shall occur without approval of the entrance by the Virginia Department of Transportation (VDOT) and a pre-activity evaluation of road conditions along the delivery route, including an estimate of predictable repairs that may be caused by the activity. If required by VDOT, a bond or other surety shall be posted by the owner or applicant based on the estimate.
- I. If a private street, shared driveway or access easement is used, the applicant must demonstrate the access is adequate for the proposed activity and that the applicant has the right to use the access. Adequate access requires the applicant to demonstrate the access has been constructed to accommodate the weight of the fully-loaded vehicle used in the activity and has sufficient width to accommodate passing traffic.
- J. The public roadway shall be cleaned/hosed on a daily basis when the operation is active to prevent the tracking of debris, mud, dirt or other materials.
- K. Waste fill is not permitted on Agricultural (RA) properties except when used for maintenance of existing farm roads or as base materials for proposed farm roads.

## PART 18

## 5-1800

## CATEGORY 18 AGRICULTURE

In addition to the general standards as set forth in Section 006 above, the following standards shall apply:

### **5-1816 Additional Standards for Storage or Disposal of Nonagricultural Fill Materials Not Generated on the Farm in Conjunction with an Agricultural Operation**

#### **5-1816.1** For parcels equal to or less than 10 acres in size:

1. A no fee Administrative Permit shall be required to allow up to 100 cubic yards of nonagricultural fill material to be placed on the subject parcel(s) within a one year period. If the amount of nonagricultural fill material exceeds 100 cubic yards within a one year period, a Special Exception approval, in accordance with Section 5-1816.2, shall be required.
2. The storage, or disposal, of nonagricultural fill materials shall not be located within 100 feet of a property line, well or the edge of a stream unless a permit has been obtained to construct an embankment within or near a stream.
3. The nonagricultural fill material must be used only to support an agricultural purpose and the applicant shall provide an Agricultural

~~Affidavit attesting to that agricultural purpose.~~

- ~~4. The applicant shall demonstrate that the nonagricultural fill material is the only available option to improve the existing agricultural operation. The applicant shall demonstrate that the soil productivity ratings of the imported fill material are equal to, or better, than the existing agricultural soils on the subject parcel(s).~~

~~5-1816.2~~ For parcels greater than 10 acres in size:

- ~~1. Special Exception approval shall not be required unless the amount of nonagricultural fill material brought to the parcel(s) exceeds 200 cubic yards within any 24 hour period OR if the amount of fill material brought to the parcel(s) exceeds 4,200 cubic yards within a one year period.~~
- ~~2. The storage, or disposal, of nonagricultural fill materials shall not be located within 100 feet of a property line, well or the edge of a stream unless a permit has been obtained to construct an embankment within or near a stream.~~
- ~~3. The nonagricultural fill material must be used only to support an agricultural purpose and the applicant shall provide an Agricultural Affidavit attesting to that agricultural purpose.~~
- ~~4. The applicant shall demonstrate that the nonagricultural fill material is the only available option to improve the existing agricultural operation. The applicant shall demonstrate that the soil productivity ratings of the imported fill material are equal to, or better, than the existing agricultural soils on the subject parcel(s).~~
- ~~5. The following items shall be required prior to the issuance of the required land disturbing permit:
  - ~~a.) A grading plan indicating the location and amount of fill to be placed on the subject parcel(s);~~
  - ~~b.) An erosion and sedimentation control plan;~~
  - ~~c.) A land disturbing permit application.~~~~

## **PART 3**

### **15-300**

### **DEFINITIONS**

The following definitions shall be used in the interpretation and administration of this Ordinance. The definition of various terms as presented herein does not necessarily represent the same definitions as may be found for the same terms in other Chapters of the Code.

**AGRICULTURE:** The use of a tract of land not less than five (5) acres for (a) the tilling of the soil, (b) the growing of crops ~~or plant growth of any kind in the open~~, including forestry, (c) pasturage, (d) horticulture, (e) dairying, (f) floriculture or (g) raising of poultry and/or livestock.

The term agriculture shall not include the following uses: (a) the maintenance and operation of commercial greenhouses and hydroponic farms, (b) the operation or maintenance of a commercial stockyard or feed yard, (c) the manufacture, processing or storage of mulch made from off-site material or for commercial purposes, (d) the sorting and grading of logs and trees except where the logs and trees are from on-site or from adjoining properties, (e) the placement, storage, or disposal of **nonagricultural excavation** excavated material, **waste and debris** ~~in excess of the limits stated in Section 5-1816, to include only soil and rock brought onto a parcel where the material is not generated on the farm, unless subject to Section 5-1816.~~ Furthermore, the definition of agriculture shall not be deemed to preclude (a) the keeping of livestock on parcels as permitted by Section 2-512, or (b) gardening as permitted as an accessory use in Section 6-102. Provided, however, subsection (c) of this above provision shall not apply to applications received by the Department of Community Development on or before March 17, 2003.

**NONAGRICULTURAL EXCAVATION FILL MATERIAL:** Material not generated on the farm imported for the purposes of a **filling, grading or stockpiling** activity, **to include CLEAN FILL and WASTE FILL.** ~~The placement, storage or disposal of uncontaminated excavated material brought onto a parcel where the material is not generated. Excavated material brought to the parcel shall only include soil and rock. Other materials are acceptable if used solely for the maintenance of the farm operation. Such materials may include, but are not limited to, gravel and asphalt millings for driveway repair.~~

**CLEAN FILL:** Fill material that (i) consists of any soil material that occurs naturally on the surface of the earth that can be dug, plowed, or planted, (ii) can be classified as a soil in accordance with the "Unified Soil Classification System," (iii) contains less than 25 percent rock fragments greater than three inches in diameter, and (iv) contains less than five percent by volume of root or woody material. Clean earth fill must be free of:

1. Any contaminants in toxic concentrations or amounts, in accordance with all applicable laws and regulations; and
2. Construction debris and demolition waste, including asphalt, concrete and other materials not found in naturally occurring soils.

**WASTE FILL:** Fill material that contains brick, concrete block, broken concrete, asphalt pavement and uncontaminated minerals, clean earth fill or other inert materials. Waste is nonreactive, physically, chemically and biologically stable from further degradation, and includes fragmented solid material such as rock, concrete, broken bricks, and block.

**STOCKPILING:** The acceptance, collection, accumulation or aggregation of soil, dirt, fill, or gravel from off-site sources, for a period of more than 12 months.

**STOCKPILING, TEMPORARY:** The acceptance, collection, accumulation or aggregation of soil, dirt, fill, or gravel from off-site sources, for a period of less than 12 months on a parcel. Such stockpiles shall be removed or immediately graded out in accordance with an approved grading plan.